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#### ENVIRONMENTAL PROTECTION AGENCY

[FRL-5825-4]

# National Advisory Council for Environmental Policy and Technology--Total Maximum Daily Load Committee: Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

### **SUMMARY:**

Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a three day meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Total Maximum Daily Load (TMDL) Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues. The TMDL Committee has been charged to provide recommendations for actions which will lead to a substantially more effective TMDL program. This meeting is being held to enable the Committee and EPA to hear the views and obtain the advice of a widely diverse group of stakeholders in the national Water Program.

In conjunction with the three day meeting, the FACA Committee members and the EPA will host two meetings designed to afford the general public greater opportunity to express its views on TMDL and water related issues.

#### **DATES:**

The three day public meeting will be held on June 11-13, 1997, in Milwaukee, Wisconsin, at the Park East Hotel, 916 E. State Street, Milwaukee, Wisconsin. The full Committee meeting begins on Wednesday, June 11, 1997, at 9:00 a.m. with adjournment scheduled for 5:30 p.m. The meeting on Thursday, June 12, 1997, will reconvene at 8:00 a.m. and is scheduled to adjourn at 3:00 p.m. On Friday, June 13, 1997, the Committee begins deliberations at 9:00 a.m. and is scheduled to conclude at 2:00 p.m.

The two public input sessions are scheduled in conjunction with the full Committee meeting in the same location. The first will occur on June 11, 1997, from 7:30-9:00 p.m. The second will occur on June 12, 1997, from 3:30-5:00 p.m.

# **FUTURE MEETING DATES:**

The Committee has scheduled additional meetings for the following dates and locations:

September 3-5, 1997 in Portland, Oregon January 21-23, 1998 in Salt Lake City, Utah

## ADDRESSES:

Materials or written comments may be transmitted to the Committee through Corinne S. Wellish, Designated Federal Officer, NACEPT/TMDL, U.S. EPA, Office of Water, Office of Wetlands, Oceans, and Watersheds, Assessment and Watershed Protection Division (4503F), 401 M Street, SW., Washington, DC 20460.

## FOR FURTHER INFORMATION CONTACT:

Corinne S. Wellish, Designated Federal Officer for the Total Maximum Daily Load Committee at 202-260-0740.

Dated: April 28, 1997. Corinne S. Wellish, Designated Federal Officer.

[FR Doc. 97-12653 Filed 5-13-97; 8:45 am]

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# FEDERAL ADVISORY COMMITTEE ON TMDLS

AGENDA FOR THIRD FULL COMMITTEE MEETING June 11 - 13, 1997 The Park East Hotel, Milwaukee, Wisconsin

### Background:

To date, the Federal Advisory Committee on Total Maximum Daily Loads (TMDLs) has met twice. At the first meeting in Herndon, Virginia (November 1996), EPA staff briefed Committee members on the TMDL progam and the Committee preliminarily identified issues it would consider. The Committee also assigned those issues to workgroups made up of Committee members for initial analysis and refinement.

Three workgroups (the Framework, Listing and Science & Tools Workgroups) reported to the full Committee during its second meeting in Galveston, Texas (February 1997). The Committee discussed the matters being deliberated by those workgroups and received further briefings on TMDL issues from State representatives. All of the Workgroups have been meeting regularly by teleconference since February.

At its third meeting in Milwaukee, the Committee will receive recommendations from four Workgroups (Listing, Science & Tools, Criteria for TMDL Approval, and Management & Oversight) and will work towards consensus on those recommendations. The Committee will also receive briefings from representatives of the agricultural community regarding water quality and TMDL-related matters.

## **Goals for the Meeting:**

At its third meeting, the Committee plans to:

- o Obtain needed input, including:
  - Information and advice from representatives of the agricultural community,
  - An update from EPA officials on national TMDL program activities, and
  - Public comment on TMDL issues;
- Work towards consensus on options for approaches to identifying (listing) impaired waters under Section 303(d)(1)(A) of the Clean Water Act:

- Consider recommendations/options from the Listing Workgroup,
   and
- Reach consensus on preferred options to the extent possible;
- Reach consensus on broad recommendations for improving the science and tools that support the TMDL program:
  - Decide on recommendations from the Science and Tools Workgroup, and
  - Provide specific direction to the Science and Tools Workgroup for refining/fleshing out its recommendations;
- Work towards consensus on approaches to criteria for approval of TMDLs and options for assuring implementation of TMDLs:
  - Consider recommendations from the Criteria for Approval Workgroup, and
  - Reach consensus on those recommendations to the extent possible;
- Work towards consensus on approaches for EPA management and oversight of the national TMDL program:
  - Consider recommendations from the Management & Oversight Workgroup, and
  - Reach consensus on those recommendations to the extent possible;
- Discuss preliminary plans for outlining and preparing the Committee's report to EPA; and
- Plan for the Committee's fourth meeting (September 3rd through 5th in Portland, OR).

#### Overall Plan for Committee Activities, June 10 to 13, 1997

- The attached proposed agenda, which provides specific information for the full Committee Meeting, may be revised (except for start times of public comment periods) by the Committee as appropriate.
- Dress for the meeting is casual.
- The meeting, including small group break-out sessions, will be open to the public; however there may be space limitations, especially for the break-out sessions.
- Members of the public who wish to speak during the public comment periods will be asked to sign up in advance or at the beginning of the comment period. Generally, speakers will be called upon on a first-come, first-served basis. Oral comments should be brief (no more than 5 minutes); detailed written comments are welcome. Commenters may be asked to respond to questions from Committee members.
- Assignments of Committee members to small groups for the break-out sessions will be made at the meeting in Milwaukee. At least one representative from the workgroup whose recommendations are being considered will be assigned to each small group to help facilitate the session and provide information on workgroup deliberations.

## **PRE-MEETING ACTIVITIES:**

Tuesday, June 10, 1997:

Many Committee members will arrive in Milwaukee Tuesday evening. Some Workgroups may meet to prepare their presentations to the full Committee. Workgroup meetings would be scheduled for 6:00 PM or later, as determined by the Workgroup members.

Wednesday, June 11, 1997:

Some Workgroups may meet for breakfast to prepare their presentations to the full Committee.

NOTE: At the time this document is being prepared, workgroups have not made final decisions about the need for pre-meeting activities. The Science & Tools Workgroup had tentatively scheduled a breakfast for Wednesday morning. The facilitator will notify members of final workgroup pre-meeting plans by no later than June 2, 1997.

#### FULL COMMITTEE MEETING:

- The full Committee will **convene at 9:00 AM**. The proposed agenda will be reviewed and modified, as appropriate, by the Committee.
- A new member, Mr. John Roanhorse, will be introduced. (Mr. Roanhorse is replacing Mr. James Hill, who resigned from the Committee due to a change in jobs and conflicting demands on his time.)
- New developments affecting the national TMDL program since the Committee's last meeting will be reviewed by Geoff Grubbs, Director of EPA's Assessment and Watershed Protection Division.
- The Listing Workgroup will present recommendations and options on the identification of impaired waters. The Committee will break out into four small groups to work towards consensus on those recommendations and will reconvene in plenary after lunch to identify areas of agreement and any outstanding concerns. To the extent possible, outstanding concerns will be addressed in plenary. The full Committee will provide any appropriate direction to the Workgroup.
- Following the afternoon break, the **Science & Tools**Workgroup will present its recommendations, based on the results of its survey of Committee members. In plenary session, the Committee will suggest any needed modifications, approve the broad recommendations of the Workgroup (as modified, if appropriate), and provide any needed direction to the Workgroup for its further refinement and elaboration on the recommended options.

## **DESCRIPTION** DESCRIPTION DE

 Following a dinner break (from 5:30 to 7:30), the Committee will reconvene in plenary to hear public comments (another public comment period is scheduled for Thursday afternoon).

Thursday, June 12, 1997:

FULL COMMITTEE MEETING CONTINUES:

- At 8:00 AM, the Committee will convene in plenary to receive briefings from representatives of the agricultural community. A light breakfast will be served for Committee members.
- At 9:30 AM, the Criteria for TMDL Approval Workgroup will present recommendations on approval requirements for TMDLs and options for assuring implementation of TMDLs. The Committee will break out into four small groups to work towards consensus on those recommendations and will reconvene in plenary after lunch to identify areas of agreement and any outstanding concerns. To the extent possible, outstanding concerns will be addressed in plenary. The full Committee will provide any appropriate direction to Workgroup.
- At 2:30 PM, the **Management & Oversight Workgroup** will present its recommendations on EPA management and oversight of the national TMDL program. (To be discussed in small groups on Friday morning.)

# **DUBLIC COMMENT:**

 From 3:30 to 5:00 PM, the full Committee will take public comment.

# SOCIAL EVENT:

A group dinner has been arranged for Committee members, including a short boat trip on the Milwaukee River, during which staff of the Wisconsin DNR will provide brief informational lectures for the members regarding water quality issues in the area.

# Friday, June 13, 1997:

# **o FULL COMMITTEE MEETING CONTINUES:**

- The Committee will begin meeting in four small groups at 8:00 AM, to work towards consensus on the recommendations of the Management & Oversight Workgroup. The full Committee will convene in plenary after the mid-morning break (at 10:00 AM) to identify areas of agreement and any outstanding concerns. To the extent possible, outstanding concerns will be addressed in plenary. The full Committee will provide any appropriate direction to Workgroup.
- **Procedural and planning** matters will be taken up by the full Committee beginning at 11:30 AM, including:
  - preparation for developing an initial outline of the Committee's report/recommendations to the EPA Administrator;
  - process and organizational matters for the Committee

# and/or its Workgroups; and

- upcoming activities, including preparations for the fourth Committee meeting in Portland, OR.
- A working lunch will be served for Committee members.
- The Committee meeting will adjourn at 2:00 PM.





# MEMORANDUM

MEMBERS OF THE TMDL ADVISORY COMMITTEE

TO:

Martha Prothro, Anne Dettelbach, and Dave White Facilitators

FROM:

5/27/97

DATE:

MATERIALS FOR THE MILWAUKEE MEETING

RE:

The enclosed packet includes the background materials from the following Workgroups for our discussions in Milwaukee:

Listing Science and Tools Criteria for Approval Management and Oversight

You should have received the agenda and logistical information under separate cover.

Please note that the cover memoranda in each Tab of the enclosed packet include recommendations and questions for the Committee's action in Milwaukee. Please read these carefully and be prepared to discuss them during the meeting.

Attached is a summary matrix indicating the current status of the Committee's work on the issues it has identified. This is intended to give you a rough idea of progress for management purposes. It does not capture some of the Committee's key work that has broadened and integrated the initial issues list (e.g., the Science and Tools survey and the Listing Process Proposals).

If you have any questions or if we can be of assistance in any way, please do not hesitate to contact us.

cc: Corinne Wellish, EPA Don Brady, EPA Hazel Groman, EPA

# Federal Advisory Committee on TMDLs: Workgroup Status Check (5/23/97)

	ISSUE/ISSUE AREA	wkgp discussion	options/framework(s) developed	wkgp agreement on preferred option(s)	committee agreement	issue subsumed in survey/ other discussion	/	decided not to discuss/ passed to other workgroups
LIS	TING WORKGROUP							
IA	Comprehensiveness of List	•	•				П	
IB	Over/UnderProtective Standards	•					H	
IC	Integrating CWA Assessments	•	•				Ħ	
ID	Defining the 303(d) List	•	•				Ħ	
IIA	Listing Criteria	•	•					
IIB	Specific Listing Situations	•	•				П	
IIC	Listing where TMDL May not Work		•			•	П	
IID	Geographic Scale	•					П	
IIE	Expected to Meet Waters	•	•				П	
IIF	Burden of Proof							
IIG	All Violated Parameters							
IIIA	Prioritization Criteria	•	•					
IIIB	Targeting/Schedules for TMDL Development		•					
IV	Implications of Being Listed	•	•					
V	Delisting/Relisting Criteria	•	•					
CR	ITERIA FOR APPROVAL							
I	General Approval Requirements							
ΙA	Definition	•	•			•	П	
ΙB	Quantification	•	•			•	П	
IC	Stressor Specific	•	•			•	П	
ID	Sufficiency of Approval Procedure	•	•			•	П	•
ΙE	Approval Checklist	•	•					•
IF	Types of TMDLs							
IG	Partial Approval	•	•					
ΙΗ	Site-Specific, Substantive, and Procedural Approval							
П	TMDLs Where No Point Sources Exist	•	•					
П	Special Types of TMDLs/Specific TMDL Issues							
Ш	Additional Approval Concerns							_
IV	Allocation							
V	Implementation							
VA	Implementation Allowances/Assurances	•	•	•				
VB	Phased TMDL Follow-Through	•	•			•		
VC	Federal Lands							
VD	Implementation Mechanisms	•						

# Federal Advisory Committee on TMDLs: Workgroup Status Check (5/23/97)

	ISSUE/ISSUE AREA	wkgp discussion	options/framework(s) developed	wkgp agreement on preferred option(s)	committee agreement	issue subsumed in survey/ other discussion		decided not to discuss/ passed to other workgroups
SC	ENCE AND TOOLS							
I	Decision-Making Under Uncertainty	•				•		•
П	Monitoring Strategies	•				•		
Ш	Effectiveness of BMPs	•				•		
IV	Model Enhancements	•				•		
V	Information Sharing	•				•		
<b>MA</b>	NAGEMENT & OVERSIGHT State-EPA Planning	•	•					
ΙB	EPA Oversight Approaches	•	•					
IC	Basis for EPA Oversight	•	•					
ID	Level of Review	•	•	•				
ΙE	State Incentives	•	•					
IF	EPA Intervention	•	•			•		
IG	Pace	•	•					
Ш	Tribal Issues							
IIIA	Federal Agency Coordination	•	•	•				
IIIB		•	•					
IV	Tracking Mechanisms	•						
VA	Encouraging Meaningful Participation	•	•				4	
VB	Citizen Monitoring	•	•	•				





# FEDERAL ADVISORY COMMITTEE ON TOTAL MAXIMUM DAILY LOADS (TMDLs)

# **Summary of Meeting Three**

June 11-13, 1997

Park East Hotel Milwaukee, Wisconsin

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Science and Tools Workgroup Presentation

Public Comment Period

Thursday, June 12, 1997

Briefing on Agriculture Issues

Criteria for Approval Workgroup Presentation

Criteria for TMDL Approval Issues Recommendations

Public Comment Period

Briefing on Wisconsin/Great Lakes TMDL Issues

Management and Oversight Workgroup Recommendations
Preparation of Draft Committee Report Outline
Wrap-up and Next Steps
Adjournment
Approval of Meeting Summary

## **Meeting Overview:**

This meeting summary describes the discussions and actions that occurred at the third meeting of the Federal Advisory Committee on Total Maximum Daily Loads (TMDLs), held June 11-13, 1997 at the Park East Hotel in Milwaukee, Wisconsin. The following were the primary outcomes of the meeting:

- The Committee received additional input on the TMDL Program and related water quality issues from States, local governments, EPA, and the general public.
- The Committee received briefings from the Listing, Science and Tools, Criteria for Approval, and Management and Oversight Workgroups on their activities. These briefings included recommended options from each Workgroup for several issues they have been charged with addressing. The full Committee discussed these recommendations and provided appropriate feedback to each Workgroup.
- The Committee briefly discussed the process that will be used to draft its final report to the EPA Administrator.

# **Participants:**

## Committee Members in Attendance:

**Bob Adler** Robert Olszewski Fredric Andes Richard Parrish John Barrett John Roanhorse Nina Bell Danita Rodibaugh J. Brad Burke Melissa Samet **Cheryl Creson** Susan Sylvester **Phil Cummings** Lydia Taylor William Nielsen **Ed Wagner** Jane Nishida

# **Committee Members Absent:**

John Burt (Ex-Oficio) Dale Givens L.D. McMullen Linda Shead

# Ex-Officio Committee Members in Attendance:

Art Bryant, U.S. Forest Service Geoff Grubbs, U.S. Environmental Protection Agency

# EPA Representatives:

Donald J. Brady, Chief, Watershed Branch, AWPD, OWOW Jim Curtin, Office of General Counsel Hazel Groman, Acting TMDL Team Leader, Watershed Branch, AWPD, OWOW

# Public Attendance:

Approximately 60 members of the public attended the meeting.

# Facilitator:

Martha Prothro, Ross & Associates

# **Conference Support:**

Ross & Associates and Tetra Tech, Inc.





# FEDERAL ADVISORY COMMITTEE ON TOTAL MAXIMUM DAILY LOADS (TMDLs)

# **Summary of Meeting Three**

June 11-13, 1997

Park East Hotel
Milwaukee. Wisconsin

Wednesday, June 11, 1997

# Welcome, Introductions, and Agenda Review:

Martha Prothro opened the meeting by welcoming the Committee, the State and EPA representatives in attendance, and the general public. Each Committee member, the Ex Officio members, and the EPA representatives introduced themselves and briefly described their experience with TMDLs. The newest member of the Committee, John Roanhorse, also introduced himself and described his perspective as the Tribal representative to the Committee. Following these introductions, Ms. Prothro reviewed the goals for the meeting and the Committee adopted the proposed agenda.

# **EPA Update: New Developments Affecting the TMDL Program:**

Geoff Grubbs, Ex Officio Committee member and Director of EPA's Assessment and Watershed Protection Division, updated the Committee on new developments affecting the TMDL program.

Litigation: Mr. Grubbs described how the number of lawsuits associated with the
TMDL Program has risen dramatically since 1992. There have been resolutions with
plaintiffs in Arizona, California (North and South), New Mexico, Pennsylvania and
West Virginia; in each case, the settlements have included a schedule for state
development of TMDLs, with EPA backstopping listing and development. He also
noted that 16 cases or notices are still pending (only one of which, in Colorado, was
initiated since the Galveston meeting).

- Draft Pace and Implementation Guidance: Mr. Grubbs next informed the Committee that EPA has circulated draft guidance on TMDL pace and implementation issues. EPA received strongly divided reactions to this draft guidance, with several comments suggesting that the tone was too negative, especially with regard to implementation of nonpoint source-only TMDLs. In response, the draft will be revised to emphasize positive incentives for development of such TMDLs (e.g., training, section 106 grants). In addition, the revised version will more explicitly recognize the responsibilities of the Federal land management agencies in controlling nonpoint source pollution, and identify vehicles in addition to water quality management plans for TMDL implementation.
- Draft 1998 Listing Guidance: Mr. Grubbs said that the draft 1998 Listing Guidance had been circulated to the States and Regions. It clarifies several issues for the 1998 listing cycle, including the following: (1) States should include on the section 303(d) lists waters that do not meet water quality standards at the time of listing, even if the standard might be revised to be less stringent; (2) States should include on the section 303(d) lists waters impaired by atmospheric deposition, by temperature, or by an unknown source or an identified pollutant; and (3) States should interpret the phrase "waters not expected to meet applicable water quality standards" as those waters expected to exceed standards before the next list submission deadline (i.e., April 2000). Mr. Grubbs indicated that the final 1998 listing guidance will be issued shortly.
- Implementation Strategy: Mr. Grubbs told the Committee that EPA had received 18 comments on its Draft TMDL Implementation Strategy. These comments addressed a variety of issues, from recommended listing requirements to the use of sound science to implementation activities. Several comments also questioned the relationship between the Strategy and the FACA Committee's report. Mr. Grubbs clarified that the Strategy is interim in nature and will serve as a guiding framework until the Committee provides its final recommendations.

Mr. Grubbs also briefly updated the Committee regarding the Index of Watershed Indicators (IWI; formerly the National Watershed Assessment Project (NWAP)) and said that IWI would be available on the Internet by the end of July. He also told the Committee that EPA has decided to keep the current two-year reporting cycle for the 305(b) reports (the Agency had previously been considering moving to a five-year cycle) because of concerns related to States' ability to adapt to the change.

In answering questions, Mr. Grubbs said that it would be unlikely that EPA would relax the 8-13 year guideline for developing TMDLs that is in the draft pace and implementation guidance, and also affirmed that many of the negative comments that were received on the guidance had come from states that have not yet been sued.

# **Listing Workgroup Presentation:**

The Listing Workgroup made a brief presentation to the Committee regarding their activities since the Galveston meeting. The Workgroup has developed five alternative listing process proposals and presented them to the Committee. These proposals identified possible frameworks for organizing listing activities and addressed several key issue areas, such as: defining the 303(d) list; list comprehensiveness; waters not listed; connection to other Clean Water Act lists; scheduling; implications of listing; and managing the list/delisting/relisting. The Workgroup pointed out that, although these proposals share many features, their differences are highlighted by one or two main ideas.

- Option 1. The 303(d)(1)(A) list is a comprehensive catalog of all [threatened and] impaired waters. Waters impaired due to only nonpoint sources are listed under 303(d)(1)(A), the list is organized into segments based on the types of waters and their status, and waters are permanently listed unless it is found that the original basis for listing was inaccurate.
- Option 2. The 303(d)(1)(A) list is a comprehensive catalog of all impaired waters (threatened waters are not listed). Waters impaired due to only nonpoint sources are listed under 303(d)(1)(A), the list is organized into segments based on the types of waters and their status, and waters are removed from the list when water quality standards are attained.
- Option 3. The 303(d)(1)(A) list is a catalog of waters impaired exclusively by point sources or a combination of point and nonpoint sources. Waters impaired exclusively by nonpoint and/or natural sources are listed under 303(d)(3). The 303(d)(1)(A) list is organized into segments based on types of waters, and waters are removed from the list when water quality standards are attained.
- Option 4. The 303(d)(1)(A) list is a "TMDL To-Do List." Other Clean Water Act processes and lists should track and address impaired waters for which TMDL development and implementation are not feasible. States can organize the 303(d)(1)(A) list as they deem appropriate and waters are removed from the list once a TMDL is approved.
- Option 5. Option 5 reflects the current EPA national position on the 303(d) listing process. Waters that are expected to meet water quality standards are not listed, waters impaired due to natural conditions are listed, and States can determine whether to list threatened waters. Waters can be removed from the list after a TMDL is approved or if water quality standards are attained by some other means.

(Full discussions of these proposed recommendations can be found in the Workgroup's background materials, available on the Internet TMDL Home Page at http://www.epa.gov/OWOW/tmdl/index.html.)

The Listing Workgroup then explained several details related to these options, especially concerning the segmenting approach. Several Committee members had questions about the relationship between the various segments of the list and the implications they had for the priority of TMDL development. One Workgroup member pointed out that the Listing Workgroup had not explicitly discussed whether segmenting would naturally lead to different levels of priority and cautioned the Committee against making that assumption.

Plenary Session on Listing Options

Following its presentation, the Listing Workgroup told Committee members that they would like to receive feedback concerning which of the five proposals were preferred and why. They also wanted to know which aspects of the preferred proposals were especially attractive and which, if any, were of concern. To give members greater opportunity for in-depth discussion, the Committee was broken into four separate breakout groups. These groups then discussed each of the five listing process proposals in greater detail.

Report from Group 1. Committee members in Group 1 were able to come to
preliminary consensus on Option 2, with several caveats. The group indicated that
TMDL lists should be inclusive, but were not in total agreement as to whether
threatened waters should be listed. (The group agreed that if threatened waters are
listed, the definition of threatened should be rather narrow.) The group agreed with

the segmenting approach as a guide to data gathering and felt strongly that delisting should only occur when water quality standards are attained.

- Report from Group 2. Group 2 did not reach consensus on any one of the five options. Several members preferred Option 2 and an alternative option was also proposed. The alternative option would not list threatened waters and would list waters impaired only due to nonpoint sources, waters impaired due to natural conditions, and waters for which TMDLs are not feasible under 303(d)(3). Group 2 did not address the implications of being listed and the scheduling of TMDLs.
- Report from Group 3. Group 3 indicated that threatened waters do not need to be listed if it can be shown that there are other mechanisms available to address the problem. The group also indicated that waters should be listed based on their condition, with the possible exception of waters impaired due to natural sources. The group also suggested that the Workgroup needs to more fully develop the values of the segmenting approach before the full Committee can make a final decision to recommend it.
- Report from Group 4. Group 4 preferred some combination of Options 1 and 2. The permanent listing requirement of Option 1 raised some concern, and the group felt that there needed to be a better definition of threatened waters. The group also emphasized that lists should be used as an accounting mechanism and suggested that one shortcoming of Option 3 was the undecided role of EPA.

Following the breakout group reports, the Committee held a general discussion during which each member identified his or her most important listing issues. Among the points made by various Committee members were:

- The listing process should provide as much flexibility as possible to States and Tribes. The segmenting approach offers one means of doing this.
- All impaired and threatened waters should be listed and stay listed until water quality standards are attained.
- The Committee needs to look at the entire Clean Water Act and realize that there are
  programs other than the TMDL Program that can address impaired waters (including
  waters impaired solely due to nonpoint sources). The focus should be on utilizing
  whatever process works.
- The Committee cannot have a full discussion of the implications of being listed until it decides exactly what constitutes a TMDL.
- EPA oversight and backstopping of State and Tribal TMDL Programs is essential to guaranteeing an effective national program.

# **Science and Tools Presentation:**

The Science and Tools Workgroup briefed the Committee on its activities since the meeting in Galveston, including the results of its survey and the Workgroup's subsequent discussions of survey topics. Based on these discussions the Workgroup assigned priorities to several issues associated with science and tools, which were summarized in its background summary report. The proposed recommendations can be summarized as follows:

- EPA should assign highest priority for science and tool development to: monitoring, modeling, training, the development of quantitative methods in situations where such methods are needed, and the development of guidance or new tools or approaches to assist in making decisions under uncertainty.
- EPA should give the next level of priority to the following topics: the development

of additional numeric criteria, the development of wet weather standards, and tools to evaluate the effectiveness of best management practices.

Given fixed resources, EPA should assign the next level of priority to the
development of: tools to assist in stakeholder communication, efforts to better
understand costs associated with TMDL development and implementation, and the
development of tools and methods to assist in evaluating TMDL effectiveness.

The Science and Tools Workgroup next presented more detailed information concerning its discussions on the highest tier issues (i.e., training, monitoring, modeling, and decision making under uncertainty) and told the Committee that it anticipates spending more time developing the details of these recommendations. The Workgroup was very interested in getting the full Committee's reactions to its preliminary recommendations and suggestions for next steps.

Plenary Session on Science and Tools Recommendations

The following points were made by various Committee members during the plenary session on the Science and Tools Workgroup's recommendations:

- Several Committee members suggested that evaluating the effectiveness of best management practices is a very important issue and should be moved into the highest tier.
- In addition to training State and Tribal personnel, EPA regional staff need to be trained to assure consistency from one region to the next.
- A top priority for training should be establishing the margin of safety that is included within a TMDL.
- Traditional monitoring programs have tended to focus on specific sites for specific pollutants; this approach does not lend itself well to developing TMDLs.
- The Science and Tools Workgroup, as well as the Committee, should spend some time trying to define what is sufficient to qualify as a phased TMDL.
- More discussion is needed on the topic of decision-making under uncertainty (tools and methods).
- Tribal specific training needs should be investigated or recognized.
- The Workgroup should consider what is a reasonable level of certainty.

# **Public Comment Period:**

Martha Prothro opened the public comment period by welcoming everyone and explaining the role of the FACA Committee in providing recommendations to EPA on how to improve the TMDL Program. She explained that, although a broad range of backgrounds and perspectives are represented on the Committee, it is not all-inclusive. The public sessions that will be held at this meeting and future ones will be an important mechanism the Committee uses to solicit input from others.

The first public comment was made by **Lewis Britt**, representing both the **National Cattlemen's Association and family ranchers**. Mr. Britt complimented the Committee on its diverse background and expressed his appreciation for the challenge that it faces. He then told the Committee that the issue is not whether to protect water quality, but how this can be done in the smartest, most efficient manner. He expressed concern that data of questionable quality can be used to assess and list waters, and said the limited resources available to agencies implementing TMDLs will continue to have an impact on implementation. He encouraged the Committee to come up with recommendations to EPA that are flexible and recognize the complex, site-specific nature of water quality problems.

an interactive computer program (on CD ROM) that can educate people about the relationship between farm activities and the environment. Mr. Strong showed the Committee how the program works and said that it has been developed by the Conservation Technology Information Center (CTIC). His point was that there are a variety of tools available to educate farmers, students, and others about farm issues and water quality.

\*Clyde Roberts, DuPont Ag Products, spoke to the Committee about the efforts of the agricultural chemical industry to promote clean water. He said that DuPont has adopted stewardship as a fundamental principle of its mission and has made a commitment to invest in new technologies that offer improvements in worker safety and environmental protection. As an example, he talked to the Committee about a new class of corn herbicides that offer excellent weed control, are cost-effective, and can be used at very low rates (0.25-0.5 ounces/acre versus 1-2 pounds/acre). The use of these products as a best management practice virtually eliminates herbicide runoff and helps prevent nonpoint source pollution. He urged the Committee to acknowledge that these types of new products are often the simplest solutions to certain types of pesticide problems.

\*Floyd Gaibler, Agricultural Retailers Association (ARA), spoke to the Committee on behalf of the 1,200+ plant nutrient and crop protection retail farm supplier companies that are members of ARA.

He emphasized the industry's commitment to protecting the environment while at the same time helping farmers provide consumers an abundance of safe and economical food and fiber. He told the Committee about the advantages of a variety of programs that ARA is involved in and how these programs help farmers address environmental issues; he also endorsed voluntary approaches such as the Conservation Reserve Program and the Environmental Quality Incentives Program. He told the Committee that the key components of making the TMDL Program work include: involving all stakeholders at the local level, emphasizing the voluntary approach, recognizing that there are several major programs available to address nonpoint pollution problems, providing flexibility in addressing storm events, and allowing adequate time to show the results of agriculture's stewardship efforts.

Arthur Talley, Texas Natural Resource Conservation Commission (TNRCC), provided the Committee a brief background of the efforts that TNRCC is involved in to coordinate its Section 319 activities and its TMDL Program. He explained that these efforts are conducted within a watershed framework, provide for regional water quality assessments, and allow local stakeholders to participate in steering committees. The benefits of this approach are that it allows for a better use of 319 funds and establishes better technical and administrative frameworks. He urged the Committee to recommend a similar type of approach when it makes its final report to EPA.

\*Allan Noe, American Crop Protection Association, talked to the Committee about how his association had received a wake-up call 2-3 years ago when it participated in a water quality seminar and heard agriculture referred to as the "silent stakeholder." This realization prompted an initiative to educate people about the efforts that the agricultural community has made to improve water quality. Mr. Noe distributed a document that outlined a number of agricultural programs that address water quality issues, each of which included a contact for more information. These programs were categorized into: education and training, research, agricultural production practices, federal regulatory initiatives, and new products and procedures. Mr. Noe wanted to educate the Committee regarding the numerous programs and new products and techniques that are already available to farmers for improving water quality.

\*James Murray spoke to the Committee as a representative of the Urban Wet Weather Federal Advisory Committee. He told members that the Wet Weather Committee has been struggling with the same types of issues that the TMDL Committee is and agrees that the watershed approach is the appropriate framework for addressing these issues. Mr. Murray

urged the TMDL Committee to review several documents that he handed out so members could identify the types of issues that the Wet Weather Committee is addressing. He wanted to extend an invitation for the two committees to coordinate more closely and to jointly build a program that will be well-received and will be meaningful to concerned stakeholders.	
*Written comments submitted to the Committee.	





# FEDERAL ADVISORY COMMITTEE ON TOTAL MAXIMUM DAILY LOADS (TMDLs)

# **Summary of Meeting Three**

June 11-13, 1997

Park East Hotel
Milwaukee. Wisconsin

Thursday, June 12, 1997

# **Briefing on Agriculture Issues:**

Steven Bednarz, Natural Resources Conservation Service - Texas, Water Resources Assessment Team

Steven Bednarz spoke to the Committee about his office's involvement with using several water quality models to assess watersheds in Texas. He briefly mentioned two field-scale models (EPIC and APEX) and then primarily discussed the use of the SWAT model for several projects. He reviewed how several GIS layers (e.g., soils, landuse/landcover, topography, climate) were input to SWAT to facilitate modeling and reported that SWAT has been calibrated to the Bosque River watershed for streamflow and monthly sediment loads. He said the model has been used to pinpoint critical subwatersheds in the state and is currently being refined to assess the impacts of nutrient loading to Lake Waco from cropland, wastewater treatment plants, and dairy waste. Future improvements to the modeling strategy will involve: adding the QUAL2E model to SWAT to model nutrient transport and loss; calibrating the model to nutrients; and linking the SWAT model to the WASP reservoir model.

Responding to questions, Mr. Bednarz reported that the SWAT model has been fairly well calibrated for streamflow in other parts of the country and is attractive because it is a physically-based, rather than empirically-based, model (i.e., the model makes predictions based on underlying causal mechanisms rather than relying entirely on statistical relationships). Mr. Bednarz also estimated that the Bosque River modeling project cost about \$150,000 over a 2-3 year period. (This cost included the WRAT staff learning the GIS system,

the UNIX operating system, the SWAT model and interface, and development of several databases.) Mr. Bednarz concluded by saying that the purpose of his presentation was to provide the Committee a feel for the complexity of the modeling process and its current capabilities and limitations.

### Bob Uphoff, Wisconsin Farmer

The next agricultural speaker was Bob Uphoff, a farmer from Madison, Wisconsin. Mr. Uphoff spoke to the Committee about his perspective running a family-owned farm and the importance of allowing farmers the flexibility to adapt to an ever-changing world food market. He reminded the Committee that agriculture has made great strides in the past 15 years in reducing soil erosion and decreasing the use of chemicals, without having to sacrifice production. He also discussed the Environmental Assurance Program that has been established by the National Pork Producers Council as another means of educating farmers about the impacts their activities might have on water quality and other resources. Mr. Uphoff also discussed a broadbased group that was formed in Wisconsin to recommend a means of minimizing the impact of livestock on water quality. This group concluded that the following four prohibitions would provide the most benefit: 1) there should be no overflows from storage structures; 2) manure should not be stacked next to streams; 3) there should be no direct runoff into waterways; and 4) livestock cannot be pastured along streams.

# Dr. Richard Johnson, Deere and Company Technical Center

Dr. Richard Johnson, head agronomist for Deere and Company, expressed his belief that more and better data are needed to accurately assess the condition of the Nation's waters. He reviewed information from EPA's latest 305(b) report that indicated that only a fraction of all waters have been fully assessed and told the Committee that, where surveys are available, they indicate that numerous pollutants are causing impairments. Dr. Johnson also told the Committee about a number of promising new technologies (such as precision farming, genetically-resistant crops, and early season nitrogen tests) that offer maximum return with minimal inputs, but that have not yet been fully implemented. He said that legislation and regulations need to allow for these types of technologies and provide incentives for implementing or adopting them. Dr. Johnson also mentioned the need for applying best management practices on a site-specific basis (he has seen examples where they have turned into worst management practices) and concluded with the following four main points:

- There is a need for more and better data.
- Current management practices are not fully used and new technologies are coming on-line all the time.
- Management practices to deal with one pollutant may be in conflict with managing another pollutant.
- There needs to be a systems approach that is site-specific.

# **Criteria for TMDL Approval Issues Recommendations:**

The Criteria for TMDL Approval Workgroup briefed the full Committee on its discussions since the Galveston meeting and outlined its current thoughts regarding general approval requirements and implementation. The Workgroup recommended that the Committee adopt its "hierarchy or matrix" approach to TMDL development and also recommended that the Committee endorse a federal requirement that would ensure that implementation of TMDLs occurs.

The Criteria for TMDL Approval Workgroup explained several aspects of its hierarchy or matrix approach. With this approach, the stringency of approval requirements for TMDLs would differ based primarily on the degree to which aspects of the TMDL can be rigorously

quantified. An "inverse proportionality" principle would lead to more rigor being required in some aspects of a TMDL when certain other aspects cannot be quantified with a high degree of confidence. This approach offers incentives for quantification and rigor in all aspects of TMDL development, but at the same time allows for and encourages forward progress in establishing TMDLs in cases of uncertainty. (Refer to the Workgroup's background materials on the TMDL Home Page for more information.)

The Workgroup also discussed its thoughts regarding requiring implementation as part of an approvable TMDL. The Workgroup recommended that EPA develop regulations that require the inclusion of implementation plans and schedules in a TMDL in order for the TMDL to be approvable. Implementation provisions would include schedules with measurable milestones for carrying out specified control actions, monitoring and evaluation provisions, and reasonable assurances (which could include nonregulatory approaches) that the control actions will be carried out.

The Workgroup requested that Committee members review its recommendations and provide appropriate feedback. To give members greater opportunity for in-depth discussion, the Committee was again broken into four separate breakout groups.

Plenary Session on Criteria for TMDL Approval Issues

- Report from Group 1. Group 1 expressed general support for the hierarchy approach, but had several concerns with requiring implementation as part of a TMDL. There were questions about how this would affect permitting decisions and the implications of EPA having the responsibility to implement TMDLs. The group also felt that the Criteria for Approval Workgroup needed to evaluate how TMDLs developed for pollutants would differ from TMDLs developed to address non-pollutant impairments (e.g., habitat modifications) and the implications that would have for approval decisions.
- Report from Group 2. Group 2 also supported the hierarchy approach, but indicated that the Workgroup needed to spend additional time clearly explaining how added rigor can be added to the various steps of TMDL development. In many cases TMDLs will be more complicated than what is portrayed in the Workgroup's discussion paper. The group also suggested that the problem identification component of TMDL development needs to be further emphasized and that stakeholder involvement is important regardless of the degree of rigor.
- Report from Group 3. Group 3 generally felt that the hierarchy approach was sound and that it offers flexibility and the ability to develop TMDLs that are not totally quantitative. The group suggested that more work needs to be focused on: developing guidance for how and when to use best professional judgement, incorporating the margin of safety, and the role that stakeholder involvement can play. The group felt that there were unanswered legal questions regarding the implementation issue, and expressed concern about the level of detail that would be included in an implementation plan.
- Report from Group 4. Group 4 was able to reach consensus and concurred with the Workgroup's recommendations for the hierarchy approach and the need for implementation. Group members felt that there should be a minimum level of data available before load allocations are assigned as part of a TMDL, especially when they would require expensive infrastructure costs. The group felt that implementation plans and schedules should be a required part of TMDL approval, but suggested that the process for modifying these plans and schedules needed to be more clearly articulated and should not be too rigid.

The following points were made by various Committee members during the plenary session on the Criteria for TMDL Approval recommendations:

- Several Committee members voiced general support for the hierarchy approach, recognizing that lack of data should not be the basis for no action.
- At least one Committee member questioned whether EPA has the authority to require implementation as part of an approvable TMDL. In response, several members voiced their opinion that, because of the ambiguity of the Clean Water Act, EPA has the choice to require implementation if it so desires.
- One member suggested that stakeholder agreement on a TMDL could conceivably substitute for quantitative rigor in some situations. Stakeholder involvement was also identified as a key first step in developing the TMDL because it facilitates a deeper, more coherent understanding of the problem.
- Several Committee members recognized that requiring implementation raises
  difficult questions when EPA develops TMDLs itself and when TMDLs need to be
  implemented on Federal lands. There was some concern (on both sides) about
  whether requiring implementation would create additional legal exposure for EPA.
- Several Committee members expressed concern that implementation plans be flexible.

Geoff Grubbs expressed his opinion that there may be a reading of the statute that would allow EPA to require implementation as part of a TMDL; however, a more substantive concern may focus on whether EPA would have a mandatory duty to backstop state implementation. He also urged the Workgroup and the full Committee to address the link that exists between the level of analysis and implementation requirements and to more clearly distinguish between implementation plans and implementation itself.

## **Public Comment:**

\*Alice Crowe, American Petroleum Institute, provided the Committee with several ideas to keep in mind as it continues its deliberation. She said that it is critically important that listing information be site-specific and based on reliable data, that there needs to be some guidance regarding minimum data requirements, and States and EPA should not assume that current water quality standards are appropriate. She also expressed the opinion that threatened waters should not be listed and that there are a variety of circumstances, not included in the Listing Workgroup's Options paper, that warrant delisting. Ms. Crowe urged Committee members to review the written comments submitted by the American Petroleum Institute and to address them during its continuing deliberations.

**Ted McKinney, Dow Elanco**, spoke to the Committee about several state and regional agricultural activities focusing on controlling nonpoint runoff. He identified several regional programs, such as the Great Lakes Initiative and the Gulf of Mexico Hypoxia Initiative, as well as several in-state projects (e.g., the Fish Creek and Eagle Creek projects in Indiana) as examples of the agricultural community coming together voluntarily to address water quality issues. He pointed out that voluntary programs are most likely to work when funds are available for cost-sharing and command and control regulations would be impractical.

Allison Shipp, U.S. Geological Survey (USGS), spoke about the role of USGS in providing hydrologic information to States and Tribes and reminded the Committee that USGS does not have any regulatory authority. She mentioned the National Water-Quality Assessment (NAWQA) Program, which is designed to describe the status and trends in the quality of the Nation's ground- and surface-water resources and to provide a sound understanding of the natural and human factors that affect the quality of these resources. She also said that USGS will continue to work with state agencies, businesses, and others to educate them about TMDLs and to try address problems before they occur. Ms. Shipp also provided a brief history of the Intergovernmental Task Force on Monitoring (ITFM) and its current mission.

Thomas White, City of Racine, Wisconsin, and American Public Works Association (APWA), complimented the Committee on the work that it has done thus far and said that the APWA is very interested in the Committee's deliberations. He voiced some concern that nonpoint sources have not received as much attention in the TMDL process as they should have and referred to Racine's inability to properly treat Lake Michigan water because of problems caused by nonpoint runoff. Mr. White also expressed some concern about the level of funding that will be needed to implement effective TMDLs and said it was inequitable to ask the urban poor to pay for treating water polluted by yacht discharges upstream.

Bruce Johnson, Fox-Wolf Basin 2000, summarized a nutrient-reduction initiative that has been developed for the Fox-Wolf River basin in northeast Wisconsin. The Fox-Wolf is the largest basin that drains to Lake Michigan and contributes sediment and nutrient runoff from a variety of sources (agriculture, urban storm runoff, municipal treatment plants, etc.). Three years ago the group (then called North East Wisconsin Waters for Tomorrow) conducted a thorough modeling and cost-effectiveness analysis of how to establish nutrient reduction targets for 41 subwatersheds in the basin. The analysis indicated that targeted nonpoint source controls were a more cost-effective means of accomplishing the load reduction target. Mr. Johnson urged the Committee to consider the use of both incentives and regulatory requirements and to promote cost-effectiveness in TMDL implementation.

**Drew Klein, Monsanto Corporation**, expressed the opinion that TMDLs should be viewed as just one of several tools that can be utilized to address water quality problems. He mentioned a voluntary program in which Monsanto customers are encouraged to establish grassed waterways on their farms and, in return, are eligible for rewards. The program required only a modest amount of money to move forward and has had a synergistic effect. Mr. Klein also said that Monsanto has been actively involved with a variety of educational efforts that inform its customers about proper chemical handling, and is also continuing to develop new technologies that will eventually lead to less of an impact to the environment. He concluded by stating that the types of programs that work are those that are voluntary, involve cost-sharing, and provide training and education.

Cameron Davis, National Wildlife Federation, encouraged the Committee to keep several principles in mind as it grapples with water quality issues. These included the concept that "one size does not fit all" (e.g., problem of applying solutions that might work in the Great Lakes region to other areas) and the importance of addressing equity in implementation efforts (e.g., that often nonpoint load reductions are much more cost-effective than point source controls). Mr. Davis pointed out that simply attaining water quality standards might not always be adequate and that zero discharge should be the ultimate goal. He also urged the use of pollution prevention and encouraged EPA to improve regional coordination between programs.

**James Murray, Urban Wet Weather FACA**, again addressed the Committee and said that the goal of the Clean Water Act is very clear: "to restore the chemical, biological, and physical health of the Nation's waters". Mr. Murray then discussed the need for standards that account for wet weather events and used the example of a river that might have dissolved oxygen of 14-15 mg/L during regular flows but only 3-4 mg/L after a storm. He said that a comprehensive watershed plan is the best way to allow all stakeholders to decide on appropriate actions.

**Emily Green, Sierra Club Great Lakes Program**, felt that development of TMDLs offer a great opportunity to implement cost-effective programs that can restore water quality. She urged the Committee to not ignore such problems as air deposition, contaminated sediments, and the elimination of toxics, and expressed her belief that TMDLs need to be site-specific. Ms. Green also asked that EPA improve the coordination that occurs among regions and pointed out that she has seen voluntary programs that have not been entirely successful.

Mark Nestlen, National Association of State Departments of Agriculture (NASDA),

offered his perspective that TMDLs are just one of several tools that can be used to improve water quality and explained several activities in which NASDA members are involved. He urged everyone to not get bogged down in the details and to remember that the ultimate goal should be to protect and enhance our natural resources. NASDA members can serve as an important resource to the Committee and will be gathering in July for a two-day forum during which these issues will be discussed. They will provide additional recommendations to the Committee following this forum.

Walter Kuhlman, from the law firm of Boardman, Suhr, Curry, and Field, addressed the Committee as a representative from a coalition of Wisconsin municipalities. He suggested that many municipalities feel that TMDLs cause both opportunities and problems. They are an opportunity because they can bring to focus the water quality problems that are caused by nonpoint sources. They can cause problems, though, because of the regulatory inequity that forces point sources to reduce the loadings that cannot be obtained from nonpoint sources. Mr. Kuhlman asked that the Committee try to resolve these issues and also made the point that point sources want some type of assurances if they are going to be asked to fund best management practices (i.e., through trading programs).

# **Briefing on Wisconsin/Great Lakes TMDL Issues:**

Several members of the Wisconsin Department of Natural Resources addressed the Committee on Thursday evening. Anne Kinney spoke about efforts to restore water quality in the Milwaukee area. Sharon Guyan then discussed Wisconsin's priority watershed approach, how it operates, and the level and sources of funding. Ms. Guyan also described several specific initiatives that Wisconsin is using to improve water quality in urban areas, including: local ordinances for construction site erosion control, stormwater planning and policy studies, streambank and habitat restoration activities, and stormwater management facilities. Progress has also been made in rural watersheds by using cost-share programs, improving communication between cities and rural areas, establishing land conservation trusts, and using easements to protect critical areas.

Sanjay Syal spoke to the Committee about TMDL listing issues, lessons that could be learned from four pilot projects in Wisconsin, the technical difficulties associated with developing TMDLs, cost estimates for developing TMDLs, and implementation issues. Among the issues that he raised were:

- There are three primary types of listed waters in Wisconsin: those that are impaired due to toxic chemicals in sediments (about 22%), those that are impaired due to low dissolved oxygen concentrations caused by eutrophication (about 67%), and those where the cause of the impairment is unknown (about 11%).
- There are instances where total nutrient loadings in urbanizing areas are increasing, even though the treatment plant's effluent limit is being met. This is due to greater flows associated with larger populations.
- In several Wisconsin basins, the great majority of loads can be traced to specific subwatersheds. This has both positive (can target activities) and negative (load reductions may need to be severe) ramifications.
- Computer models that can be categorized as being low or medium in complexity are often not very useful for developing TMDLs. There is a need to use the most complex models, which are costly.





# FEDERAL ADVISORY COMMITTEE ON TOTAL MAXIMUM DAILY LOADS (TMDLs)

# **Summary of Meeting Three**

June 11-13, 1997

Park East Hotel Milwaukee. Wisconsin

Friday June 13, 1997

# **Management and Oversight Workgroup Recommendations:**

The Management and Oversight Workgroup met (via teleconference) six times between the Galveston and Milwaukee meetings. Its work focused primarily on the following issues areas: EPA oversight approaches and processes, EPA/State coordination with other agencies/entities (including federal agencies), incentives/disincentives, and public notice/participation. The Workgroup asked the full Committee to concur on several recommended approaches, and also explained that several issues have not yet been fully discussed. The Workgroup also welcomed its newest member, John Roanhorse, and acknowledged that they had postponed discussing many Tribal issues because he had not yet joined the Committee.

The four specific recommendations that the Workgroup asked the Committee to consider are summarized below. The Workgroup discussed several aspects of each of these recommendations, which are more fully addressed in the Workgroup's discussion paper (available on EPA's Internet TMDL Homepage).

 EPA oversight of, and assistance to, State programs should be iterative and flexible, depending on the type of TMDL and other relevant circumstances.

EPA should use some combination of incentives and disincentives to help ensure State performance in the TMDL program. EPA/States should engage the public at the earliest possible state in 303(d) list and TMDL development.

The public's involvement should not be limited to reviewing State 303(d) list and TMDL submittal to EPA but should include participation in all stages of list and TMDL preparation.

- b)

  EPA/States should maintain a notification list of all interested parties in a given watershed and distribute a schedule of public participation opportunities relating to list and TMDL development activities so that parties can prepare for meaningful participation.
- c)
  States should encourage (and support) local governments, landowners, regulated entities, or community leaders to take the lead in TMDL development by helping them learn about TMDL requirements and procedures and by providing a process for submitting TMDLs to the State for inclusion in its submittal to EPA.
- d) States should actively encourage high quality citizen monitoring and communicate how and when such information can be incorporated into TMDL program activities.

EPA should ensure that other federal agencies know which waters are on the 303(d) list, which TMDLs are under development or implemented, and what opportunities exist to help develop and/or implement TMDLs. EPA should also help other federal agencies understand how to give full consideration to TMDL programs in their workplans or funding agreements with States.

Plenary Session on Management and Oversight Presentation

a)

Following a brief discussion on the Management and Oversight Workgroup's presentation, the Committee separated into four breakout groups to more fully discuss the above recommendations.

- Report from Group 1. Group 1 provided several comments regarding each of the Workgroup's recommendations. It supported an iterative involvement by EPA, but questioned whether a checklist approach would be sufficient to guide the approval process. The group also suggested that the Workgroup distinguish between incentives that are used to promote implementation of TMDLs versus those that are aimed at improving State or Tribal water quality programs. The group strongly endorsed the public participation recommendations and asked the Workgroup to consider the role that federal agencies other than EPA can play in the process (e.g., the Bureau of Indian Affairs and the Public Health Service).
- Report from Group 2. Group 2 agreed that the Management and Oversight workgroup was on target, with several qualifications. They felt that the checklist approach should be used as guidance rather than a regulatory tool and offered several additional factors in which greater EPA oversight would be needed (e.g., complexity of the problem). The group also reported having a lively discussion on the issue of using incentives/disincentives and urged the Workgroup to more fully explore the details of how these would work. The group felt that federal agencies should be treated as another stakeholder group included in Recommendation #3 and thought that a process should be developed whereby citizens can formally nominate waters for listing.
- Report from Group 3. Group 3 suggested that Endangered Species Act considerations should be addressed early within the TMDL process, and felt that

EPA could provide more direct assistance (i.e., staff resources) in situations where TMDLs are close to being finished but States or Tribes do not have the requisite resources. The group also recommended that the Management and Oversight Workgroup distinguish between incentives aimed at State or Tribal programs versus individual TMDLs, and pointed out that the level and type of public participation will vary at different stages of listing and TMDL development activities.

Report from Group 4. Group 4 agreed with both the iterative approach and variable
oversight recommendations and encouraged the Workgroup to identify several more
factors that might affect EPA oversight. Group 4 also discussed several issues
associated with the incentives/disincentives recommendation, including how States
could prioritize TMDL development based on brownfield issues, whether the
rotation of forest harvests would constitute "new" discharges, and the use of
leveraged TMDLs (when TMDL development is funded by non-governmental
entities).

After the breakout group reports, the full Committee held a general discussion on Management and Oversight issues. Among the points made during this discussion were:

- Application of incentives and disincentives will have to be handled differently for Tribes than it is for States.
- There are many aspects of the equity issue--equity between point and nonpoint sources, equity between new and existing point sources, equity between polluters and waterbody users, etc.
- The requirements for using citizen monitoring data for TMDL purposes should be the same as those that apply to other non-governmental entities.
- TMDL development should proceed at a pace that allows for active public participation This will speed the ultimate implementation of the TMDL.
- The real challenge of integrating discharge prohibitions into the TMDL process is to allow for economic progress while still protecting water quality.

(Note: The initial Management and Oversight Workgroup discussion occurred on Thursday afternoon.)

#### **Preparation of Draft Committee Report Outline:**

The Committee decided that, prior to the Portland meeting, a small group could begin to draft a background section and perhaps also portions of the science and tools and management and oversight sections. However, the Committee decided it was premature to develop an outline for the report.

# Wrap-up and Next Steps:

The Committee addressed several logistical issues at the end of the meeting.

- Mike Haire (Maryland Department of the Environment) was invited to dial in to the Science and Tools teleconferences and Ed Wagner was invited to participate in the discussions focusing on decision making under uncertainty.
- A sub-group of the full Committee was formed to address the implications of EPA requiring implementation as part of an approvable TMDL (i.e., under 303(d) as opposed to 303(e)). An EPA representative will assist this sub-group.
- Ed Wagner was designated as the official liaison to the Wet Weather FACA.
- Several Committee members were asked to coordinate the presentations that will
  occur at the Portland meeting and to invite appropriate stakeholders for the public
  comment periods.

- The Committee also brainstormed some Workgroup next steps:
  - > Listing: Priority Setting, Targeting, De-listing, Implications of Being Listed
  - > Science and Tools: Data Quality, BMP Effectiveness, (Refine Recommendations)
  - >Approval: Allocation, Phased TMDLs, Implementation on Federal Lands, Antidegradation, Margin of Safety, Seasonal and Temporal Variability > Management and Oversight: Tribal Issues, Pace, Implementation
- It was agreed that the "Implications of Being Listed" issue would be referred primarily to the Listing Workgroup.
- Fred Andes requested to sit in on the Listing Workgroup's discussion of the implications of being listed.
- The Committee also agreed that it needed to continue its rigorous schedule to be able to complete its work by next spring.

# **Adjournment:**

Ms. Prothro then adjourned the meeting with a second from the Committee.

# **Approval of Meeting Summary:**

Mechanisms

This summary of the third meeting of the Federal Advisory Committee on Total Maximum Daily Loads was reviewed and approved by the full Committee at the September 3-5 meeting in Portland, Oregon.

Corinne S. Wellish Date
Designated Federal Official